

HB 451

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CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to forcible felony violators; creating the
7 Anti-Murder Act; creating s. 903.0351, F.S.; denying bail
8 or any form of pretrial release to forcible felony
9 violators in certain circumstances; amending s. 948.06,
10 F.S.; providing definitions; providing that forcible
11 felony violators shall remain in custody pending the
12 resolution of probation or community control violation
13 hearings; providing exceptions; providing for hearings to
14 determine the nature and probability of any danger that
15 forcible felony violators pose to the community before
16 release of violators following probation or community
17 control violations; amending s. 921.0024, F.S.; revising
18 Criminal Punishment Code computations to provide
19 additional community sanction violation points when a
20 community sanction violation is committed by a forcible
21 felony violator; reenacting ss. 948.012(2)(b), 948.10(9),
22 and 958.14, F.S., relating to split sentence of probation
23 or community control and imprisonment, community control

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 programs, and violation of probation or community control
25 program, respectively, to incorporate the amendment to s.
26 948.06, F.S., in references thereto; providing
27 applicability; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

30
31 Section 1. This act may be cited as the "Anti-Murder Act."

32 Section 2. Section 903.0351, Florida Statutes, is created
33 to read:

34 903.0351 Bail or pretrial release not permitted for
35 forcible felony violators.--A forcible felony violator as
36 defined in s. 948.06 shall not be granted bail or any form of
37 pretrial release prior to the resolution of the probation or
38 community control violation hearing, unless the violation charge
39 or arrest is based solely on failure to pay costs, fines, or
40 restitution payments.

41 Section 3. Subsection (4) of section 948.06, Florida
42 Statutes, is amended, and subsection (8) is added to said
43 section, to read:

44 948.06 Violation of probation or community control;
45 revocation; modification; continuance; failure to pay
46 restitution or cost of supervision.--

47 (4) Notwithstanding any other provision of this section, a
48 probationer or an offender in community control who is arrested
49 for violating his or her probation or community control in a
50 material respect may be taken before the court in the county or
51 circuit in which the probationer or offender was arrested. That

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52 | court shall advise him or her of such charge of a violation and,
53 | if such charge is admitted, shall cause him or her to be brought
54 | before the court which granted the probation or community
55 | control. If such violation is not admitted by the probationer or
56 | offender, the court may commit him or her or release him or her
57 | with or without bail to await further hearing. The court, as
58 | soon as is practicable, shall give the probationer or offender
59 | an opportunity to be fully heard on his or her behalf in person
60 | or by counsel. After such hearing, the court shall make findings
61 | of fact and forward the findings to the court which granted the
62 | probation or community control and to the probationer or
63 | offender or his or her attorney. The findings of fact by the
64 | hearing court are binding on the court which granted the
65 | probation or community control. Upon the probationer or offender
66 | being brought before it, the court which granted the probation
67 | or community control may revoke, modify, or continue the
68 | probation or community control or may place the probationer into
69 | community control as provided in this section. However, if any
70 | violation other than a failure to pay costs, fines, or
71 | restitution payments is alleged to have been committed by a
72 | forcible felony violator, as defined in subsection (8), the
73 | probationer or offender may not be released and may not be
74 | admitted to bail but shall be brought before the court that
75 | granted the probation or community control.

76 | (8)(a) In addition to the provisions of subsections (1)-
77 | (7), this subsection provides further requirements regarding a
78 | probationer or offender in community control who is a forcible

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79 felony violator. The provisions of this subsection shall control
80 over any conflicting provision in subsections (1)-(7).

81 (b) For purposes of this subsection and ss. 903.0351 and
82 921.0024, the term:

83 1. "Forcible felony violator" means a person who:

84 a. Is on probation or community control related to the
85 commission of a qualifying offense;

86 b. Is on probation or community control for any offense
87 committed on or after July 1, 2005, and has committed a
88 qualifying offense; or

89 c. Is on probation or community control for any offense
90 committed on or after July 1, 2005, and is found to have
91 violated that probation or community control by committing a
92 qualifying offense.

93 2. "Qualifying offense" means any of the following
94 offenses committed on or after July 1, 2005:

95 a. Any forcible felony as defined in s. 776.08, excluding
96 offenses under s. 810.02(4);

97 b. Any attempt to commit a forcible felony as defined in
98 s. 776.08, excluding offenses under s. 810.02(4);

99 c. Any offense under s. 800.04; or

100 d. Any offense in another jurisdiction that would be an
101 offense described in sub-subparagraphs a.-c. if that offense had
102 been committed in this state.

103 (c) In the case of a violation arising from any ground
104 other than a failure to pay costs, fines, or restitution
105 payments, a forcible felony violator shall remain in custody
106 pending the resolution of the probation or community control

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107 violation. The court may not dismiss the probation or community
108 control violation warrant pending against a forcible felony
109 violation without holding a recorded hearing at which both the
110 state and the violator are represented.

111 (d) If the court determines that a forcible felony
112 violation has violated any nonmonetary term of probation or
113 community control, the court must revoke the probation or
114 community control, must adjudge the probationer or offender
115 guilty of the offense charged and proven or admitted, and shall
116 sentence the probationer or offender as provided in s. 921.0024.

117 (e) If the court imposes a prison sentence, this paragraph
118 shall not apply. Before the court may release a forcible felony
119 violation from custody or impose any nonstate prison sanction for
120 violation of probation or community control, the court must hold
121 a Danger to the Community hearing to determine the danger that
122 the forcible felony violator poses to the community. The court
123 must hold this hearing as soon as practicable following the
124 violation or probation or community control hearing and may
125 conduct the Danger to the Community hearing immediately after
126 adjudicating the probationer or offender guilty of the
127 violation.

128 1. If the court determines, by a preponderance of the
129 evidence, that a forcible felony violator poses a danger to the
130 community, the court shall sentence the violator pursuant to s.
131 921.0024, up to and including the statutory maximum, and shall
132 neither consider the mitigating circumstances in s. 921.0026 nor
133 otherwise depart downward from the sentencing guidelines.

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134 2. If the court finds, or the state stipulates, that the
135 release of the forcible felony violator does not pose a danger
136 to the community, the court may sentence the forcible felony
137 violator according to s. 921.0024 and consider any mitigating
138 circumstances provided in s. 921.0026. The court must enter a
139 written order to make a finding that the forcible felony
140 violator does not pose a danger to the community.

141 3. In determining the danger posed by the defendant's
142 release, the court may consider the nature and circumstances of
143 the violation and any new offenses charged; the defendant's past
144 and present conduct, including convictions of crimes; any record
145 of arrests without conviction for crimes involving violence or
146 sexual crimes; any other evidence of allegations of unlawful
147 sexual conduct or the use of violence by the defendant; the
148 defendant's family ties, length of residence in the community,
149 employment history, and mental condition; the defendant's
150 amenability to non-incarcerative sanctions based on his or her
151 history and conduct during the probation or community control
152 supervision from which the violation hearing arises and any
153 other previous supervisions, including disciplinary records of
154 previous incarcerations; the likelihood that the defendant will
155 engage again in a criminal course of conduct; the weight of the
156 evidence against the defendant; and any other facts the court
157 considers relevant.

158 Section 4. Paragraph (b) of subsection (1) of section
159 921.0024, Florida Statutes, is amended to read:

160 921.0024 Criminal Punishment Code; worksheet computations;
161 scoresheets.--

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(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation, unless any of the following apply; ~~however,~~

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the ~~such~~ violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a forcible felony violator as defined in s. 948.06(8)(b), but does not include a new felony conviction, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation not involving a new felony conviction.

3. If the community sanction violation is committed by a forcible felony violator as defined in s. 948.06(8)(b), and includes a new felony conviction before the sentencing court, twenty-four (24) community sanction violation points are

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190 assessed for the violation, and for each successive community
191 sanction violation involving a new felony conviction.

192
193 Multiple counts of community sanction violations before the
194 sentencing court shall not be a basis for multiplying the
195 assessment of community sanction violation points.

196
197 Prior serious felony points: If the offender has a primary
198 offense or any additional offense ranked in level 8, level 9, or
199 level 10, and one or more prior serious felonies, a single
200 assessment of 30 points shall be added. For purposes of this
201 section, a prior serious felony is an offense in the offender's
202 prior record that is ranked in level 8, level 9, or level 10
203 under s. 921.0022 or s. 921.0023 and for which the offender is
204 serving a sentence of confinement, supervision, or other
205 sanction or for which the offender's date of release from
206 confinement, supervision, or other sanction, whichever is later,
207 is within 3 years before the date the primary offense or any
208 additional offense was committed.

209
210 Prior capital felony points: If the offender has one or more
211 prior capital felonies in the offender's criminal record, points
212 shall be added to the subtotal sentence points of the offender
213 equal to twice the number of points the offender receives for
214 the primary offense and any additional offense. A prior capital
215 felony in the offender's criminal record is a previous capital
216 felony offense for which the offender has entered a plea of nolo
217 contendere or guilty or has been found guilty; or a felony in

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another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5.

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If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal street gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang as prohibited under s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Section 5. For the purpose of incorporating the amendment to section 948.06, Florida Statutes, in a reference thereto,

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paragraph (b) of subsection (2) of section 948.012, Florida Statutes, is reenacted to read:

948.012 Split sentence of probation or community control and imprisonment.--

(2) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(b) If the offender does not meet the terms and conditions of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control. The court may not provide credit for time served for any portion of a probation or community control term toward a subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable as provided in s. 775.082. Such term of incarceration shall be served under applicable law or county ordinance governing service of sentences in state or county jurisdiction. This paragraph does not prohibit any other sanction provided by law.

Section 6. For the purpose of incorporating the amendment to section 948.06, Florida Statutes, in a reference thereto,

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subsection (9) of section 948.10, Florida Statutes, is reenacted to read:

948.10 Community control programs.--

(9) Procedures governing violations of community control shall be the same as those described in s. 948.06 with respect to probation.

Section 7. For the purpose of incorporating the amendment to section 948.06, Florida Statutes, in a reference thereto, section 958.14, Florida Statutes, is reenacted to read:

958.14 Violation of probation or community control program.--A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06. However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he or she was found guilty, whichever is less, with credit for time served while incarcerated.

Section 8. This act shall take effect July 1, 2005, and shall apply to offenses committed on or after that date.